



**Fiscal Review Committee
Contract #: 60109, Amendment 1
Tracking #: 33103-00419**

- 1. Summary Letter**
- 2. Supplemental Documentation Form**
- 3. Edison Total Expenditures Report**
- 4. Approved Amendment Request**
- 5. Approved Strategic Technology Solutions Endorsement Request**
- 6. Original Contract**
- 7. Proposed Amendment**



BILL LEE
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PENNY SCHWINN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Fiscal Review Committee
FROM: Penny Schwinn, Commissioner
DATE: July 8, 2019
RE: Request to appear before the fiscal review committee regarding non-competitive contract amendment for agency tracking #: 33150-00419

Please consider the enclosed request for a non-competitive contract amendment with Eldarion, Inc. Eldarion, Inc. provides site hosting and maintenance of the department's district and school planning tool, InformTN. Districts and schools are required to submit an annual plan of goals, strategies, and action steps as a requirement of federal law (the Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA)).

InformTN allows districts and schools to view their data and comparisons with other districts and schools to support their annual planning. On the dashboard, districts can see a summary of indicators in the categories of climate and access, educators, academic achievement and growth, and college and career readiness.

An amendment is needed to build additional capabilities into InformTN and add funding to support this work. Eldarion, Inc. will build out InformTN in 4 key areas: (1) additional data visualizations, such as inclusion of additional metrics related to career and technical education; (2) platform enhancements, such as grouping and analyzing needs; (3) the ability for users to customize data visualizations and create their own "data stories"; and (4) provide specific integrations and resources to our most at-need schools, identified as Comprehensive Support and Improvement Schools and Additional Targeted Support Schools.

These improvements have been identified based on feedback from district leaders throughout the first year of statewide implementation of InformTN and include additional functionality that users have highlighted would improve their ability to use the tool, analyze their data, and create strong plans. A \$200,000 increase in both state and federal funds over two years is needed to develop this additional capacity in the platform, resulting in a new total maximum liability of \$298,000.00; this amendment will not change the term of the contract.

A non-competitive amendment to implement these enhancements is appropriate because InformTN was custom-built by Eldarion, Inc. according to our specifications, and they are the current provider of the tool. Further, extensive customization has been implemented to integrate InformTN with the TDOE's existing technology solutions. Therefore, there would be a significant cost to the State to transition this body of work to another vendor. Costs would include rebuilding and re-training on the data visualization and setting up the integration.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	(615) 770-3869
*Presenter's name(s):	Joanna Collins, Eve Carney, and Jay Klein		
Edison Contract Number: (if applicable)	60109	RFS Number: (if applicable)	33103-00419
*Original or Proposed Contract Begin Date:	Jan. 30, 2019	*Current or Proposed End Date:	Dec. 31, 2020
Current Request Amendment Number: (if applicable)	01		
Proposed Amendment Effective Date: (if applicable)	Sept. 15, 2019 or when fully approved in Edison		
*Department Submitting:	Department of Education		
*Division:	Consolidated Planning & Monitoring		
*Date Submitted:	July 8, 2019		
*Submitted Within Sixty (60) days:	Yes		
If not, explain:	N/A		
*Contract Vendor Name:	Eldarion, Inc.		
*Current or Proposed Maximum Liability:	\$298,000.00		
*Estimated Total Spend for Commodities:	N/A		
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)			
FY: 2019	FY: 2020	FY: 2021	
\$24,500.00	\$149,000.00	\$124,500.00	
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)			
FY: 2019	FY: 2020	FY: 2021	
\$22,500.00	\$12,500.00	\$0.00	
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	An invoice for the month of June is still pending; we expect all funds for this fiscal year to be expended once this invoice is received.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:			

Supplemental Documentation Required for
Fiscal Review Committee

State:	\$100,000.00	Federal:	\$198,000,00
Interdepartmental:	N/A	Other:	N/A
If “other” please define:	N/A		
If “interdepartmental” please define:	N/A		
Dates of All Previous Amendments or Revisions: (if applicable)	Brief Description of Actions in Previous Amendments or Revisions: (if applicable)		
N/A	N/A		
Method of Original Award: (if applicable)	N/A		
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	All deliverables were discussed via phone calls and emails between the contractor and various department stakeholders. The department received a projected cost for each deliverable based on the time and labor required.		
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.	<p>The planning tool was developed by Eldarion to the State’s specifications. No other vendor would be able to provide these services without substantial transition costs, both financial and labor, in addition to the actual cost of services.</p> <p>Currently, the platform includes two components – the wraparound planning application and a set of data visualizations that appear within the application. We are planning enhancements on both components, so another vendor would not be able to complete all of our requested enhancements that would be provided with this amendment. Additionally, extensive customization has been implemented to integrate this platform with the TDOE single sign-on setup and other technology solutions; there would be a significant cost to transferring and training up a new vendor on these integrations, including:</p> <ol style="list-style-type: none"> 1. Rebuilding the data visualization; 2. Re-training on the data visualization; and 3. Setting up the integration. 		

Supplier: Eldarion, Inc.
Contract: 60109
Expenditures as of 07/01/2019

Unit	Voucher ID	Invoice #	Amount Pd	Pymnt Date	Edison Contract ID	PO_ID	RECEIVER_ID	Vendor ID	Vendor Name
33101	00480747	2243	\$ 2,000.00	2/13/2019	0000000000000000000060109	0000104830	0000132557	0000215599	Eldarion Inc
33101	00485367	2247	\$ 25,000.00	3/27/2019	0000000000000000000060109	0000105422	0000133466	0000215599	Eldarion Inc
33101	00487259	2249	\$ 2,000.00	3/28/2019	0000000000000000000060109	0000106249	0000134306	0000215599	Eldarion Inc
33101	00491300	2255	\$ 2,000.00	4/25/2019	0000000000000000000060109	0000107285	0000135776	0000215599	Eldarion Inc
33101	00497271	2262	\$ 2,000.00	6/10/2019	0000000000000000000060109	0000108657	0000137612	0000215599	Eldarion Inc
33101	00500899	2273	\$ 2,000.00	6/26/2019	0000000000000000000060109	0000109731	0000138571	0000215599	Eldarion Inc

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agspr@spr.gov

<p>APPROVED Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney</p>	Digitally signed by Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney DN: cn=Michael F. Perry, Chief Procurement Officer by T. L. Stuart CPO Attorney, o=Central Procurement Office, ou=DGS, email=toni.stuart@tn.gov, c=US Date: 2019.05.03 10:45:05 -05'00'
CHIEF PROCUREMENT OFFICER	DATE

Agency request tracking #	33103-00419
1. Procuring Agency	Department of Education
2. Contractor	Eldarion, Inc.
3. Edison contract ID #	60109
4. Proposed amendment #	01
5. Contract's Original Effective Date	January 30, 2019
6. Current end date	December 31, 2020
7. Proposed end date	December 31, 2020
8. Current Maximum Liability or Estimated Liability	\$ 98,000.00
9. Proposed Maximum Liability or Estimated Liability	\$ 298,000.00
10. Strategic Technology Solutions Pre-Approval Endorsement Request <i>- information technology service (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
11. eHealth Pre-Approval Endorsement Request <i>- health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Human Resources Pre-Approval Endorsement Request <i>- state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
13. Explain why the proposed amendment is needed	
<p>Eldarion Inc. maintains the underlying system architecture and licensing for the production, staging, demo, and development environments of the planning tool (InformTN) connected to ePlan (the state grants management system) for all districts and schools to use when analyzing their needs assessment and developing goals, strategies, and action steps at the school and district level. An amendment is needed to: (1) add a scope item providing for additional capabilities in InformTN; (2) increase the maximum liability and payment methodology to reflect this additional scope item.</p> <p>The new scope item will allow for additional data visualizations, additional platform enhancements, the ability for users to customize data visualizations, and functionality intended to better integrate and provide resources to our most at-need schools identified as Comprehensive Support and Improvement Schools and Additional Targeted Support Schools. These improvements have been identified based on feedback from district leaders throughout the first year of statewide implementation of InformTN and include additional functionality that users have highlighted would improve their ability to use the tool, analyze their data, and create strong plans in the system</p>	

Agency request tracking #	33103-00419
<p>14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.</p> <p>Eldarion is the state's current vendor for the planning tool; a sole source amendment to their contract is therefore appropriate to make updates to the tool.</p> <p>The State has determined that there would be significant switching costs associated with completing these updates through another vendor. This includes the following estimated costs:</p> <ol style="list-style-type: none"> 1. Rebuilding the data visualization: <ol style="list-style-type: none"> a. The initial product took the contractor (through subcontractor) three months to complete. Since then, we have added significantly more to the product (~3 sprints last summer so ~6-9 weeks of work). That was with at least one to two developers focused primarily on this and a considerable percentage of time for one product manager. Likely cost: \$60,000 and 6-9 weeks of time. b. Our internal team currently prepares data for the tool according to the specifications. This takes ~2 months for one to two analysts and would need to be redone for a new vendor. Likely cost: \$20,000 and 2 months of time. 2. Re-training on the data visualization: <ol style="list-style-type: none"> a. Each of our eight regional directors spent a four hour training block, held at least twice, just to begin to familiarize the districts with the new visualization and additional individual/one-off trainings to understand what they were looking at and how to move through the tool. Likely cost: Hard to quantify this, but we're talking a decent amount of time that CORE directors and staff put into planning and delivering training. 3. Setting up the integration: <ol style="list-style-type: none"> a. This was the primary focus of at least two to three weeks for Eldarion and their subcontractor, with additional assistance/communication with our IT team. There has also been follow-up work periodically to ensure continued coordination with new single sign on releases, for example, or new roles being added. Likely cost: \$20,000 	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <p>Dr. Penny Schwinn_jc</p> <p>Digitally signed by Dr. Penny Schwinn_jc DN: cn=Dr. Penny Schwinn_jc, o, ou, email=joanna.collins@tn.gov, c=US Date: 2019.05.02 15:40:39 -05'00'</p>	



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Andrea Thorsbakken
E-mail : Andrea.Thorsbakken@tn.gov

DATE : April 2, 2019 Received by STS on Tuesday, April 3, 2019.

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 33103-00419

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

**Stephanie Dedmon,
CIO (WMH)**

Digitally signed by Stephanie
Dedmon, CIO (WMH)
Date: 2019.04.16 20:12:54 -05'00'

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Applicable RFS # 33103-00419	
Contracting Agency	Department of Education
Agency Contact (name, phone, e-mail)	Andrea Thorsbakken, Andrea.Thorsbakken@tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input checked="" type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input checked="" type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p>Information Systems Plan (ISP) Project Applicability</p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required): Cliff Llyod</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project# <input checked="" type="checkbox"/> Not Applicable </p>	
<p>Subject Information Technology Service Description</p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>Eldarion Inc. maintains the underlying system architecture for the production, staging, demo, and development environments of the planning tool connected to ePlan (the state e-grants management system) for all districts and schools to use when analyzing their needs assessment and developing goals, strategies, and action steps at the school and district level. Additionally, this service includes licensing with Juice Analytics, support for bug fixes, maintenance, data housing, back-ups, and integration technology with the ePlan vendor, Harris, Mackessy, & Brennan, Inc.</p> <p>This amendment will provide for additional capabilities and enhancements, and will include the following changes to the scope of work:</p> <p>A 8. At the request of the State, the Contractor shall build out additional capabilities to the Platform in the following four categories:</p> <ol style="list-style-type: none"> a. Additional data visualizations, which may include, but are not limited to, additional metrics related to career and technical education and educator information as well as additional visualizations that provide for insight across multiple datasets b. Platform enhancements, which could include, but are not limited to, additional functionality for: grouping and analyzing identified needs, reordering items by end users, exporting various components, and more easily navigating between various components c. Ability for users to "create their own" data stories which would allow specific users to customize the data visualizations available in the Platform. d. Supports in the Platform aimed specifically as State-designated Comprehensive Support and Improvement Schools and Additional Targeted Support Schools. These supports could include but are not limited to additional functionality for: viewing and analyzing data, accessing evidence-based resources focused on school improvement, examining current 	

Applicable RFS # 33103-00419

- e. practices, and strategically planning for change and improvement. The Contractor shall implement these additional capabilities in two-week work cycles. Deliverables to be included in each work cycle will include items described in items A.8.a-A.8.d and will be defined in a work plan that is mutually agreed between the State and Eldarion, Inc. prior to the start of each work cycle.



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 30, 2019	End Date December 31, 2020	Agency Tracking # 33103-00419	Edison Record ID 60109
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Contractor Legal Entity Name Eldarion, Inc.	Edison Vendor ID 0000215599
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Goods or Services Caption (one line only)
Site hosting and maintenance of the ePlan district and school planning tool

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # N/A
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019	\$0.00	\$24,500.00	\$0.00	\$0.00	\$24,500.00
2020	\$0.00	\$49,000.00	\$0.00	\$0.00	\$49,000.00
2021	\$0.00	\$24,500.00	\$0.00	\$0.00	\$24,500.00
TOTAL:	\$0.00	\$98,000.00	\$0.00	\$0.00	\$98,000.00

Contractor Ownership Characteristics:

- Minority Business Enterprise (MBE):
 - African American
 - Asian American
 - Hispanic American
 - Native American
- Woman Business Enterprise (WBE)
- Tennessee Service Disabled Veteran Enterprise (SDVBE)
- Disabled Owned Business (DSBE)
- Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety nine (99) employees
- Government Non-Minority/Disadvantaged Other

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

- Competitive Selection
- Other

Sole source contract via approved special contract request. The planning tool was developed in partnership with Eldarion (who subcontracted with Juice Analytics) and our ePlan vendor, HMB. The planning tool application, built by Eldarion, was custom-built for our purposes, and the licensed product provided by Juice Analytics has been custom integrated into the planning tool. The planning tool is also integrated with the State's single sign on system. Soliciting a new tool and product would represent a significant cost to the State, both monetarily and effort.

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations

Chris Foley

Digitally signed by Chris Foley
DN: cn=Chris Foley, o=Tenn
Dept of Education, ou=OCFO,
email=chris.foley@tn.gov, c=US
Date: 2019.01.16 13:52:42 -06'00'

Speed Chart (optional)
ED00000932

Account Code (optional)
Various

S U P P L E M E N T A L S U M M A R Y S H E E T

RFS Number		33103-00419						
Edison ID		60109						
Fiscal Year	Depart. ID	Speedchart Number	Program Code	Account Code	Fund	Project/ Grant Code	CFDA #	Amount
2019	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$12,000.00
2019	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$12,500.00
2020	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$24,000.00
2020	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$25,000.00
2021	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$12,000.00
2021	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$12,500.00
TOTAL								\$98,000.00

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
ELDARION, INC.**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Eldarion, Inc. ("Contractor"), is for the provision of site hosting and maintenance of the ePlan district and school planning tool, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Arlington, MA
Contractor Edison Registration ID # 0000215599

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. **Background:** As a requirement of the Every Student Succeeds Act ("ESSA"), districts and schools are required to submit an annual school improvement plan ("Annual Plan"). In the Annual Plan, districts and schools outline the goals, strategies, and action steps that they are going to take to address their Prioritized Needs, which districts and schools identify based on a Needs Assessment. In 2017, the State created a new planning tool that was more streamlined, data-driven, and interactive to support in meeting this requirement. The new tool, called InformTN (the Platform), is housed within ePlan, the State's grants management system. InformTN was piloted by eleven (11) districts and their schools in the spring and fall of 2018, and it will be implemented with all districts in January 2019 and all schools in May 2019.
- A.3. Definitions shall be as follows and as set forth in the Contract:
- a. ePlan: The State's electronic online grants management system ("GMS"). ePlan is an online platform that provides access to federal and state grants applications and budget processes. The Platform is a feature that users can access only by signing into ePlan.
 - b. Every Student Succeeds Act ("ESSA"): Federal law that reauthorizes the Elementary and Secondary Education Act ("ESEA"), the nation's national education law and longstanding commitment to equal opportunity for all students. ESSA requires that all districts and schools annually complete an Annual Plan to be eligible for federal funding.
 - c. Capture Needs: A feature within the Platform where the user can click a graph from a Data Visualization and it will save the image as a Prioritized Need. The function of Capturing Needs is part of the Needs Assessment.
 - d. Data Visualizations: Data Visualizations are graphs, such as bar graphs and trend timelines, of the available state data loaded into the platform.
 - e. Environment: The Environment is the underlying information and structure that supports the Platform.
 - f. Harris, McKessey, and Brennan Inc: Harris, McKessey, and Brennan (HMB) is the developer and contractor for ePlan.
 - g. Local Education Agency ("LEA"): School district, special school, or Achievement School District ("ASD")
 - h. Needs Assessment: A Needs Assessment is the process by which all districts and schools review their available data (such as TNReady test results, student absenteeism,

and teacher data) and determine which are the Prioritized Needs to be addressed in the upcoming school year in their Annual Plan.

- i. School or District Improvement Plan ("Annual Plan"): All districts and all schools in Tennessee must create an Annual Plan. The Annual Plan is based on a Needs Assessment and outlines the goals, strategies, and action steps that districts and schools are going to take to address their Prioritized Needs.
- j. Platform: The Platform is the computer-based program that provides individualized Data Visualizations for the Needs Assessment and all of the required features, outlined in this Contract, for the Annual Plan. The Platform is also known as the planning tool, called InformTN. The Platform can be accessed by signing into ePlan.
- k. Prioritized Needs: Prioritized Needs are data that districts and schools identify as significant and plan to address in the upcoming school year in their Annual Plans.

A.4. The Contractor shall provide a Platform that allows the State, districts, and schools to utilize, at minimum, all of the following capabilities within the Contractor's Platform:

- a. View Data Visualizations that include an overall data dashboard, data pages for college and career readiness, educators, opportunity to learn, and academic achievement and growth, and an additional data page to compare metrics across districts and schools.
- b. Users should be able to Capture Needs based on Data Visualizations, organize needs by priority, and write goals, strategies, and action steps based on Prioritized Needs.
- c. Communication messaging to other individuals within the Platform by district or school. The State shall be able to message all district users, district users shall be able to message all school users within their district, and school users shall be able to message their district users.
- d. Allow users to answer questions related to the Annual Plan, with additional questions populating for districts and schools based on designation. For example: For a school that is identified with a state or federal designation, the school will have additional questions specific to their status. The designations and questions will be provided by the State.
- e. Host additional, district-specific resources. These resources are documents already created by the State that will be provided to the Contractor.
- f. Allow all users to upload additional data and supporting documents.
- g. Export the completed Annual Plan as a PDF or excel document
- h. Review and approve Annual Plans (state and districts only).
- i. Set user roles as referenced in A.7. Users will have the appropriate district or school specific access based on their ePlan user access level.

A.5. The Contractor shall provide site hosting and ongoing maintenance of the Platform including:

- a. Maintain underlying Environment architecture for production, staging, demo, and development environments.
- b. Load testing to ensure production environment is able to handle expected usage for 2019. The expected district-level usage is four hundred and fifty (450) individuals and the expected school-level usage is five thousand (5,000) individuals.
- c. Scale infrastructure to expected usage for January 2019 (districts) and May 2019 (schools)

- d. Technical Support: The Contractor shall provide email and live chat support on business days during the hours of 8 a.m.–5 p.m. Central Time to assist in the configuration and use of the software.
 - e. Problem Resolution. The Contractor shall correct, within three (3) business days (by providing workaround or correction in an upgrade), any reproducible software defects reported.
 - f. Manage uptime (e.g. run regular checks on connectivity and application availability) and monitor resources and infrastructure on an ongoing basis to adjust for scaling or application growth.
 - g. Upload all data provided by the State within seven (7) business days of file receipt.
- A.6. The Contractor shall implement internal controls within the Contractor's Platform. The internal controls shall include designating user roles as follows. The users roles should match the individual's ePlan approved user access.
- a. The Contractor shall ensure that the State has "Administrator access" to see all district and school information.
 - b. Districts should only be allowed access to the data or information for their assigned schools.
 - c. Schools should only be allowed access to the individual school data or information.
- A.7. The Contractor shall work with the builder of ePlan, HMB, to integrate the Platform into ePlan to enable each user to have a seamless experience. As a result of the functionality, users should have the ability to move throughout the different areas of ePlan and the Platform without the need to log in and out of ePlan or go to different website.
- a. The Contractor shall work collaboratively with HMB to share the necessary information to maintain the incorporation of the Platform into ePlan.
 - b. Ongoing communication, functionality, and data sharing between the Contractor and the HMB will take place as needed to facilitate the continued seamless incorporation of the Platform into ePlan.
- A.8. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this

Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.9. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective for the period beginning on January 30, 2019 ("Effective Date") and ending on December 31, 2020, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Ninety Eight Thousand Dollars (\$98,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1
 - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology,

Goods or Services Description	Amount (per compensable increment)
License Fee, A.4.	\$ 25,000/year
Site hosting and ongoing maintenance, A.3 , A.5 , A.6. A.7	\$ 2,000/month

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Adriana Harrington, Director of Project Management
Tennessee Department of Education
710 James Robertson Parkway, 9th Floor
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Education, Consolidated Planning & Monitoring;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in

accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Adriana Harrington, Director of Project Management
Department of Education
710 James Robertson Parkway, 9th Floor
Nashville, TN 37243
Adriana.Harrington@tn.gov
Telephone #: (615) 532-6287

The Contractor:

Patrick Altman, President
Eldarion
28 Harvard Street
Arlington, MA 02476
paltman@eldarion.com
Telephone #: (615) 300-2930

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any

other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No

term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaroud plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a any amendrnent to this Contract, with the latter in time controlling over any earlier amendrnents;

- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section: The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the Tennessee Department of Education as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State, except for professional liability (errors and omissions) insurance. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor

Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident and one million dollars (\$1,000,000) policy limit by disease
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees.

- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars (\$1,000,000) per occurrence or claim and two million dollars (\$2,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than one million dollars (\$1,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.5. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.6. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.7. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.8. Transfer of Ownership of Custom Software Developed for the State.
- a. Definitions.
 - (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
 - (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
 - (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
 - (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
 - (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.
 - b. Rights and Title to the Software
 - (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual

- non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.
 - (3) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
 - (4) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.9. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor agrees to allow the State or its delegate to conduct a penetration test annually against its Processing Environment at no cost to the Contractor and agrees to remedy within thirty (30) days any vulnerability detected that the State views as a risk to the confidentiality of the state data contained within the system. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. **Minimum Requirements**

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:
<https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. **Comptroller Audit Requirements**

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that

apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 12 hours
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 12 hours
- (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

E.10 Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.12 Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract, and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the

purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.13. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
 - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF,

ELDARION, INC.:



January 11, 2019

CONTRACTOR SIGNATURE DATE

Patrick Altman, President

PRINTED NAME AND TITLE OF
CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION:

Dr. Lyle Ailshie_jc

Digitally signed by Dr. Lyle Ailshie_jc
DN: cn=Dr. Lyle Ailshie_jc, o, ou,
email=joanna.collins@tn.gov, c=US
Date: 2019.01.18 08:15:14 -06'00'

DR. LYLE AILSHIE, DATE
COMMISSIONER

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	60109
CONTRACTOR LEGAL ENTITY NAME:	Eldarion, Inc.
EDISON VENDOR IDENTIFICATION NUMBER:	0000215599

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Patrick Allman, President

PRINTED NAME AND TITLE OF SIGNATORY

January 11, 2019

DATE OF ATTESTATION



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 33103-00419	Edison ID 60109	Contract # 60109	Amendment # 01		
Contractor Legal Entity Name Eldarion, Inc.			Edison Vendor ID 0000215599		
Amendment Purpose & Effect(s) Add scope item for additional capabilities in InformTN, increase the contract maximum liability, and update the payment methodology in order to build out those additional capabilities					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: December 31, 2020			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			+\$ 200,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019	\$0.00	\$24,500.00	\$0.00	\$0.00	\$24,500.00
2020	\$50,000.00	\$99,000.00	\$0.00	\$0.00	\$149,000.00
2021	\$50,000.00	\$74,500.00	\$0.00	\$0.00	\$124,500.00
TOTAL:	\$100,000.00	\$198,000.00	\$0.00	\$0.00	\$298,000.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
Speed Chart (optional) Various		Account Code (optional) Various			

S U P P L E M E N T A L S U M M A R Y S H E E T

RFS Number	33103-00419
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Edison ID	60109
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Fiscal Year	Description	Department ID	Speedchart Number	Program Code	Account Code	Fund	Project/Grant Code	CFDA #	Amount
2019	Site Hosting	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$12,000.00
2019	License Fee	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$12,500.00
2020	Site Hosting	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$24,000.00
2020	License Fee	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$25,000.00
2020	Enhancements	3310300000	ED00000932	149995	70803000	25000	N/A	N/A	\$25,000.00
2020	Enhancements	3310300000	ED00001352	372600	70803000	25000	EDESSAT1A19ADSI	84.377A	\$25,000.00
2020	Enhancements	3311102000	ED00000459	883000	70803000	25000	N/A	N/A	\$50,000.00
2021	Site Hosting	3310300000	ED00000932	149995	72203000	25000	N/A	N/A	\$12,000.00
2021	License Fee	3310300000	ED00000932	149995	72201000	25000	N/A	N/A	\$12,500.00
2021	Enhancements	3310300000	ED00000932	149995	70803000	25000	N/A	N/A	\$25,000.00
2021	Enhancements	3310300000	ED00001352	372600	70803000	25000	EDESSAT1A19ADSI	84.377A	\$25,000.00
2021	Enhancements	3311102000	ED00000459	883000	70803000	25000	N/A	N/A	\$50,000.00

TOTAL									\$298,000.00
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**AMENDMENT 01
OF CONTRACT 60109**

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Eldarion, Inc. hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following is added as Contract Section A.8 and all subsequent sections are renumbered accordingly.
 - A.8. At the request of the State, the Contractor shall build out additional capabilities to the Platform in the following categories:
 - a. Additional data visualizations and related functionality, which may include, but are not limited to, additional visualizations that allow for viewing of cross-tabular data, functionality to export data to tabular spreadsheets, additional functionality to navigate directly from the overview data dashboard to specific data tabs, creation of new data visualization tabs, replacement or addition of a metric to an existing visualization, and addition of simple or complex visual to an existing tab.
 - b. Improvements to the needs analysis component to support deeper and more thorough needs assessments. Improvements may include, but are not limited to, improvements to the more seamlessly conduct the root cause analysis, additional functionality for multi-level organizing, sorting, filtering, commenting on, and referencing saved data visualizations, integration of additional supports (e.g., analysis protocols) for conducting root cause analyses, and creation of year-to-year comparisons of saved data visualizations.
 - c. Enhancements to the planning component (including plan development and related questions) which may include, but are not limited to, functionality for reordering, regrouping, and exporting plan components, functionality for planners and reviewers to add comments and feedback to plans outside of the formal feedback, functionality to track progress updates throughout the year, and functionality to compare performance measures from year to year.
 - d. Improvements to the approval functionality through which the state and district approve district and school plans. Improvements may include, but are not limited to, additional functionality to provide section level feedback, streamlining of the submitting and approval process to more easily view sections with feedback, and summaries of feedback provided and subsequent changes from previous reviews.
 - e. Improvements to the administrator interface and technical functionality including items such as ability for administrator to manage school years and handle updates to organizations as well as infrastructure and technical updates to improve scaling and integrations with SSO and ePlan.
 - f. Additional capabilities as needed and as identified by districts as useful to the planning process.
2. The following is added as Contract Section A.9 and all subsequent sections are renumbered accordingly.
 - A.9. The Contractor shall implement the additional capabilities listed in A.8. in sprints, defined as two-week (ten business days) work cycles. The State may request up to ten (10) sprints.

- a. Deliverables to be included in each sprint will include items described in items A.8.a-A.8.f and will be defined in a work plan that is mutually agreed between the State and the Contractor prior to the start of each sprint. The State may request that the Contractor spend more than one sprint on any one of the items described in Sections A.8.a-A.8.f.
- b. Only the deliverables listed in A.8.a-A.8.f and specifically requested by the State shall be included in each sprint. Deliverables shall be reviewed and approved by the State to ensure work plan expectations have been met.
- c. In the event that a deliverable takes less than a full sprint to complete, payment for the sprint completion shall be pro-rated to the actual number of business days it took to complete the deliverable.
- d. The Contractor shall not update any changes to the live production site until the Contractor has reviewed the changes with the State and the State has provided final approval, not to be unreasonably withheld. The Contractor shall address any feedback provided by the State during review at no cost to the State.

3. Contract section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Ninety Eight Thousand Dollars (\$298,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

4. Contract section C.3 is deleted in its entirety and replaced with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
License Fee, A.4.	\$ 25,000/year
Site hosting and ongoing maintenance, A.3., A.5., A.6. A.7.	\$ 2,000/month
Additional capabilities, A.8.	\$20,000/sprint

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

ELDARION, INC.:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF EDUCATION:

DR. PENNY SCHWINN, COMMISSIONER

DATE